



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-R8-ES-2021-0157; FXES11140800000-20223FF08ECAR00]

Endangered and Threatened Species; Receipt of an Incidental Take Permit

Application for the California Condor; Availability of Draft Conservation Plan and Draft Environmental Assessment; Pine Tree Wind Farm, Kern County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Los Angeles Department of Water and Power for an incidental take permit under the Endangered Species Act of 1973, as amended. The permit would authorize take of the federally endangered California condor (*Gymnogyps californianus*) incidental to otherwise lawful activities associated with operation of the existing Pine Tree Wind Farm. We invite comments on the draft conservation plan and the draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We will take comments into consideration before deciding whether to issue an incidental take permit.

DATES: To ensure consideration, please submit your written comments by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R8-ES-2021-0157 at <https://www.regulations.gov>.

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by any of the following methods:

- *Email:* fw8cfwocomments@fws.gov. Include “Pine Tree Wind Farm Incidental Take Permit” in the subject line of the message.
- *U.S. Mail:* Assistant Field Supervisor, Palm Springs Fish and Wildlife Office, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, CA 92262.

We request that you send written comments by only one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Peter Sanzenbacher, Fish and Wildlife Biologist, by mail at Palm Springs Fish and Wildlife Office (address above), by phone at 760-322-2070, extension 425, or via email at peter_sanzenbacher@fws.gov. If you use a telecommunications device for the deaf, hard of hearing, or speech disabled, please call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We have received an application from the Los Angeles Department of Water and Power (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally endangered California condor (condor), incidental to otherwise lawful activities at the Pine Tree Wind Farm (project), as described in the applicant’s draft conservation plan. The project began operations in 2009 and is within the Tehachapi Wind Resource Area in the eastern foothills of the southern Sierra Nevada in Kern County, California.

Background

Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations promulgated pursuant to section 4(d) of the ESA (16 U.S.C. 1533) prohibit the take of endangered species without special exemption. Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing permits for endangered and threatened species are set forth in title 50 of the Code of Federal Regulations (CFR) at part 17, sections 17.22 and 17.32.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service's proposed issuance of an incidental take permit for the federally endangered California condor.

Permit Application

The applicant has submitted a draft conservation plan that describes the activities covered by the permit, such as the operation of wind turbines and other specified activities associated with project components. To minimize the risk of incidental take, the applicant will maintain a program to detect condors approaching the project and temporarily curtail operating wind turbines when appropriate. The conservation plan also includes adaptive management to allow for maintaining the protection of condors as technologies, condor behavior, and other factors change over time. To mitigate the impact of the potential incidental take, the applicant proposes to work with an existing captive breeding facility to fund the production of additional condors for release into the wild. The Service and applicant used a population viability analysis to inform the mitigation strategy and ensure that the level of potential injury or mortality of condors permitted at the project would not impede recovery of the species. The population viability analysis report is appended to the draft conservation plan.

The Service prepared a draft environmental assessment to evaluate the impacts of issuing the proposed incidental take permit on the human environment, consistent with the purpose and goals of NEPA and pursuant to the Council on Environmental Quality's

implementing NEPA regulations at 40 CFR parts 1500–1508. Additionally, the draft environmental assessment was prepared consistent with the Department of the Interior NEPA regulations (43 CFR part 46); longstanding Federal judicial and regulatory interpretations; and Administration priorities and policies including Secretary’s Order No. 3399 requiring bureaus and offices to use “the same application or level of NEPA that would have been applied to a proposed action before the 2020 Rule went into effect.”

A “Frequently Asked Questions” document for the above-described population viability analysis is attached to the draft environmental assessment. The draft conservation plan and the draft environmental assessment consider alternatives to the proposed action, including a no action alternative.

Public Comments

If you wish to comment on the draft conservation plan and draft environmental assessment, you may submit comments by one of the methods in **ADDRESSES**.

Public Availability of Comments

You may submit comments by one of the methods shown under **ADDRESSES**. All comments and materials we receive in response to this request will become part of the decision record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We issue this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1539) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

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